

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
 FOR THE COUNTY OF YAVAPAI

2012 MAR -7 AM 8:57

SANDRA K MARKHAM, CLERK

BY: Jaqueline Hershman

STATE OF ARIZONA, )

Plaintiff, )

vs. )

JAMES ARTHUR RAY, )

Defendant. )

Case No. V1300CR201080049

Court of Appeals

Case No. 1 CA-CR 11-0895

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
 BEFORE THE HONORABLE WARREN R. DARROW  
 TELEPHONIC STATUS CONFERENCE

JANUARY 13, 2011

Camp Verde, Arizona

**ORIGINAL**

REPORTED BY  
 MINA G. HUNT  
 AZ CR NO. 50619  
 CA CSR NO. 8335

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
2 FOR THE COUNTY OF YAVAPAI  
3  
4 STATE OF ARIZONA, )  
5 Plaintiff, )  
6 vs ) Case No. V1300CR201080049  
7 JAMES ARTHUR RAY, ) Court of Appeals  
8 Defendant ) Case No. 1 CA-CR 11-0895  
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24 REPORTED BY  
25 MINA G. HUNT  
AZ CR NO. 50619  
CA CSR NO. 8335

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1 Proceedings had before the Honorable  
2 WARREN R. DARROW, Judge, taken on Thursday,  
3 January 13, 2011, at Yavapai County Superior Court,  
4 Division Pro Tem B, 2840 North Commonwealth Drive,  
5 Camp Verde, Arizona, before Mina G. Hunt, Certified  
6 Reporter within and for the State of Arizona.  
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1 APPEARANCES OF COUNSEL:

2 For the Plaintiff:

3 YAVAPAI COUNTY ATTORNEY'S OFFICE  
4 BY: SHEILA SULLIVAN POLK, ATTORNEY  
5 BY: BILL R. HUGHES, ATTORNEY  
6 255 East Gurley  
7 Prescott, Arizona 86301-3868  
8 (Appearing by telephone.)  
9

7 For the Defendant:

8 MUNGER TOLLES & OLSON, LLP  
9 BY: LUIS LI, ATTORNEY  
10 BY: TRUC DO, ATTORNEY  
11 355 South Grand Avenue  
12 Thirty-fifth Floor  
13 Los Angeles, California 90071-1560  
14 (Appearing by telephone.)  
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1 P R O C E E D I N G S

2 THE COURT: This is V1300CR201080049, State  
3 versus James Arthur Ray. Mr. Ray has waived his  
4 appearances for conferences of this nature. But  
5 I've been informed on the line are for the defense  
6 Truc Do and Luis Li.  
7

7 Is that correct?

8 MR. LI: Correct, Your Honor.

9 MS. DO: Good morning, Your Honor.

10 THE COURT: And then Sheila Polk and Bill  
11 Hughes.

12 MS. POLK: Judge, that's correct. Also  
13 present here at the county attorney's office are  
14 Cathy Durrer, Detective Diskin and Pam Moreton,  
15 from victim services.

16 MR. HUGHES: And, Your Honor, this is Bill  
17 Hughes. With the leave from the court, I need to  
18 leave in about 15 minutes to go to Division 5 if  
19 that's okay with the Court.

20 THE COURT: Of course. And that might be all  
21 the time we need anyway to cover what we need to  
22 today.

23 The questionnaire I have prepared is,  
24 basically, what I want to send. The proposed  
25 questions that the defense has presented, I think,

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1 for the most part, those are legitimate voir dire  
2 questions and likely many of them will be asked.  
3 But this questionnaire I've designed is  
4 really to find people who just don't have a chance  
5 of being on the jury for whatever reason. And  
6 that's really the goal of the questionnaire in this  
7 particular case.

8 A couple of things that will be different  
9 from the copies you have. On page 2, it's about  
10 the middle where there are instructions about  
11 reporting. Says, "You must appear for jury duty on  
12 February 16 or February 17 as instructed on the  
13 enclosed summons for jury duty." I don't think  
14 yours reads that way.

15 But here's my approach: And this is an  
16 approach I used several years ago in a case that  
17 had a great deal of local media attention. I had  
18 jurors show up in two separate groups and at  
19 different times. I thought that I had done it in  
20 that case a morning group and then an afternoon  
21 group. I don't remember if I actually did it in  
22 two days. But the concept is the same.

23 Have general questioning to a whole panel  
24 of veniremen and then get through a certain point  
25 of questioning. And then another -- then the other

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1 group comes in the next day and do the same thing.  
2 Go through the same thing, with the idea being by  
3 the third day in this case you have a group of  
4 jurors who you can work with so that you can then  
5 select a jury in the traditional way.

6 I know there are ways to question juries  
7 where you address the whole panel. I really prefer  
8 the way that's normally done in this jurisdiction,  
9 which is to have a group of jurors seated with the  
10 chart and the strikes coming from that group.

11 My anticipation or my thought at this  
12 time is to have the 12 jurors, 6 alternates,  
13 meaning there will be 18 people and plus the  
14 strikes -- there will be 30 people that will be  
15 seated and directly questioned.

16 That's the overall framework I want to  
17 work with. That's my idea at this time. I  
18 understand that we have to be flexible. The  
19 defense has a motion to change place of trial. We  
20 really have to see what effect media has had on the  
21 case on the prospective jurors. And all those  
22 things remain open. But that -- what I've  
23 described is my general approach.

24 Any problem with that or any concerns  
25 about that?

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1 Mr. Polk.

2 MS. POLK: Judge, I think that sounds  
3 appropriate.

4 THE COURT: Ms. Do or Mr. Li.

5 MS. DO: Your Honor, good morning. It's  
6 Ms. Do. Thank you. I think we're fine with that  
7 procedure. I just have some clarification  
8 questions. When Your Honor states that we would  
9 have general questions of the whole panel and then  
10 we would repeat that for the next group, by  
11 "general questions," that would be attorney voir  
12 dire as well, or is that the Court's voir dire?

13 THE COURT: That's going to be the Court's  
14 voir dire. And I'm going to try to target  
15 questions, again, that are most likely to reveal  
16 persons who are going to have difficulty with  
17 sitting as a juror on the case.

18 Normally I reserve questioning for the  
19 whole panel. I reserve that for just hardship type  
20 questions or, given the type of case, the type of  
21 case. There are certain cases, as we know, cases  
22 involving children, for example, where many, many  
23 people will just say they don't want to be on the  
24 case and don't feel they can be fair. And that's  
25 the type of question I present to the whole panel

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1 rather than have people shuffling up back and forth  
2 from the jury box back to the audience.

3 The other thing I want to -- or the  
4 audience area. The other thing I want to do in  
5 this case, I said I would do this for some time.  
6 But when we get down to the final panel that we  
7 will be working with, there will be 30 people  
8 seated in the jury box area.

9 And I'll mention we are going to use the  
10 large courtroom for this. I'll talk about  
11 courtrooms also. That's something I want to bring  
12 up. I did talk to Judge Mackey about that.

13 But when we have the group which, again,  
14 I would hope there would be approximately a hundred  
15 people present, 30 people seated in the jury box  
16 area, I'm going to give the other jurors little  
17 pads and golf pencils so that we don't get to the  
18 point where people are coming up and they're being  
19 replaced as people are being dismissed by the  
20 Court, and they come up in front and then you ask  
21 them, have you heard all the questions? Would you  
22 have had any yes answers?

23 Well, that works fine even within the  
24 first hour or so, and you can remind people. But  
25 this voir dire I anticipate will likely take a

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1 longer period of time than some of many trials.  
 2 And I want the people who are listening to the  
 3 questions but not being directly questioned at that  
 4 time -- I want them to have something to write on  
 5 so they can record what yes answers they would  
 6 have. So I do want to use that procedure this  
 7 time. Seems to make sense to me.

8 I might have --

9 Ms. Do, you might have had some other  
 10 comments about the general procedure.

11 MS. DO: Thank you, Your Honor. Just a few  
 12 more. Does the Court, then, contemplate exercising  
 13 challenges the main -- during the Court general  
 14 voir dire on day one and day two to get through the  
 15 final panel of 30 where we would then exercise  
 16 preemptory strikes?

17 THE COURT: That's something that we could do.  
 18 Normally at that stage I have made -- I've excused  
 19 people really at my own discretion when it became  
 20 apparent that the person had a true hardship or was  
 21 not going to be able to sit on the case because of  
 22 the nature of the case and that person's  
 23 background.

24 But there certainly could be discussion  
 25 with attorneys. We could just leave time for that

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1 if there are people that I have not excused that  
 2 the parties want to talk about.

3 Ms. Polk.

4 MS. POLK: Judge, I guess my -- with what you  
 5 were saying, that, generally speaking, a lot of  
 6 what the Court does on your own discretion. But  
 7 there may be some cases where a party feels there  
 8 was -- there is a for-cause reason to strike.

9 THE COURT: I'd want to take that up before we  
 10 bring everybody back. Yes.

11 Ms. Do, I think that's a good idea. We  
 12 just need to allow enough time at the end to be  
 13 able to address that.

14 MS. DO: Thank you.

15 MS. POLK: But, Judge, if I can -- just to  
 16 clarify to make sure we're all still on the same  
 17 page. Even within that process we're still not  
 18 contemplating that the attorneys would be asking  
 19 questions of the panel on day one and day two? It  
 20 still would be the Court's questions?

21 THE COURT: That's true. The attorney  
 22 questioning would happen in the context after I've  
 23 gone through everything. And then you will have  
 24 the 30 people that have gone through the Court's  
 25 voir dire.

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1 MS. POLK: And, Judge, if I can follow up,  
 2 then. Typically we submit to the Court questions  
 3 for voir dire. Are you -- if I'm understanding the  
 4 day one and day two, you're focusing in on the  
 5 hardship and more of a general questions.

6 When we finally seat the panel of 30,  
 7 would you still be going through the additional  
 8 questions, or at that point you would turn it over  
 9 to the attorneys?

10 THE COURT: I think at that point I will still  
 11 have a number of general questions I want to  
 12 present. I would think that the attorneys would  
 13 probably want me to ask some of the questions  
 14 anyway rather than just turn it over to the  
 15 attorneys. So I think there would still be some  
 16 additional questioning.

17 What I'm saying, Ms. Polk, is expanding  
 18 what I normally would do, which would be hardship  
 19 and then sometimes nature of the case to perhaps  
 20 some more focused questions that might develop  
 21 particular problems. That would be in the general  
 22 questioning.

23 And then with the voir dire -- with the  
 24 30 people seated in the jury box, I would think  
 25 there would still be some additional court

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1 questions, some of the general background questions  
 2 still that are on the chart, perhaps the knowing  
 3 law enforcement question, that type of thing, also  
 4 studying law. Those kinds of questions I think I  
 5 would probably still ask.

6 But are you suggesting that it might be  
 7 just appropriate to turn it over to the attorneys  
 8 after the Court's questioning of each separate  
 9 panel on each separate day?

10 MS. POLK: No. No. I'm suggesting -- I'm in  
 11 agreement with you, Judge, that day one and day two  
 12 you're asking all the questions. When we narrow it  
 13 down to the panel of 30, you still then would ask  
 14 the more specific questions and then allow the  
 15 attorneys the voir dire.

16 And I think that the -- that's a really  
 17 good way to approach it. Because we will end up --  
 18 when we bring in the large groups, we will end up  
 19 with people who from the moment they come to court,  
 20 they know they probably can't serve for some  
 21 reason. And to flesh that out through the way  
 22 you're proposing to do it, I think, is a good idea.

23 And -- but I think when we narrow it to  
 24 30, to still have to ask the questions that we've  
 25 asked you to ask and then turn it over to the

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1 attorneys is the best way to go.

2 THE COURT: Okay.

3 Ms. Do.

4 MS. DO: Thank you, Your Honor. My last  
5 question is does the Court feel that the final  
6 panel of 30 that is contemplated to bring back the  
7 third day will be enough considering that there  
8 will still be cause strikes? And then I think each  
9 side gets six preemptories. Correct? So I'm a  
10 little bit concerned about the number.

11 THE COURT: That's the procedure in this  
12 jurisdiction. I'm hoping there will be 70 to 80  
13 people out in the -- what I said the audience, in  
14 the regular seating. Those are the people that are  
15 going to get the little pads to keep up.

16 Because this -- I mean, the voir dire  
17 could -- typically jurors are selected sometimes in  
18 the morning but often -- you know -- right after  
19 lunch. And I understand there could be more  
20 questioning. I want them to be able to write down  
21 their yes answers. But I would hope we'd have 70  
22 to 80 in addition to the 30.

23 Is that clear now, Ms. Do?

24 MS. DO: Yes. Thank you very much.

25 THE COURT: Okay. But, again, I don't know.  
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1 I think when we get the answers to the  
2 questionnaire back, we're going to get some  
3 indication if there are a lot of problems, and we  
4 may have to do different things in terms of  
5 selecting a jury.

6 I remember in a death penalty case in a  
7 trial where -- I only mention that because the jury  
8 selection issues were obviously more complicated  
9 there. Questioning in small panels. I can't  
10 remember if we did 8 at a time or 10 at a time or  
11 something like that. And I -- you know -- I don't  
12 really want it to be into that kind of situation.  
13 But we have to be, I think, flexible with what it  
14 might take to get a fair and impartial jury.

15 But this is the way I'd like to start out  
16 anyway. I'm open to any idea. It appears we're in  
17 agreement to go with this approach initially.

18 Anything else on just the general  
19 approach?

20 I don't hear anything.

21 MS. DO: No from the defense.

22 MR. LI: No, Your Honor.

23 MS. POLK: Judge, I do have a -- this is  
24 Ms. Polk. I do have a couple of comments about the  
25 questionnaire.

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1 THE COURT: Good. I'm going back to that now.

2 Go ahead.

3 MS. POLK: Okay. Well, I just had a few.

4 Generally speaking, I'm in agreement with the  
5 questionnaire, but I have a few areas that I have  
6 some suggestions on. And assuming we all have the  
7 same pagination, I'm looking at the top of page 3.

8 THE COURT: Okay.

9 MS. POLK: It would be the second paragraph,  
10 that begins with -- I'm sorry. It's the first  
11 paragraph, that begins with, "The purpose of this  
12 questionnaire is not to ask."

13 THE COURT: Right.

14 MS. POLK: I'm not sure that that statement is  
15 correct. I'm concerned because that statement says  
16 the purpose is to determine if there is anything  
17 about this case or the nature of the crimes charged  
18 that might cause you to be less than 100 percent  
19 fair and impartial.

20 And I don't think these questions -- I  
21 think there will be other things that will come out  
22 later. I think the purpose of this questionnaire  
23 is really focusing on media exposure and hardship.  
24 And so I'm just worried that that's going to make  
25 jurors feel like they have more to say but there is  
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1 no place for them to say it.

2 My suggestion is that we take out that  
3 entire paragraph. The last two sentences we  
4 actually set out where about no right and wrong.  
5 So if I can direct your attention up to page 1, the  
6 third paragraph. You say there is no right or  
7 wrong answers. My suggestion is that we delete  
8 that paragraph. I don't think it's necessary. And  
9 I'm worried that's too inclusive and it leaves --  
10 the person who is filling it out -- I think that  
11 it's much broader really than what the purpose of  
12 the questionnaire is.

13 THE COURT: I agree. I think it needs to go  
14 one way or the other. Either eliminate it or  
15 tailor it to what it's really asking, to see if  
16 there's a hardship, any concern with the nature of  
17 jury duty or anything about the nature of the case.

18 MR. LI: Your Honor.

19 THE COURT: Mr. Li.

20 MR. LI: Your Honor, if I may. I think the  
21 last page, question 10(a), discusses exactly this  
22 issue. It's not just have you had media impact  
23 or -- you know -- media related to this case, but  
24 is there anything about that that would cause you  
25 to be -- you know -- not fair and impartial. And I

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1 think it just doesn't hurt to have the jurors told  
2 that -- you know -- that we want to know whether  
3 you can be fair and impartial.

4 THE COURT: Okay.

5 MS. DO: I think the Court's suggesting of  
6 tailoring it rather than deleting it, we can add in  
7 there -- and we can place it first -- but to  
8 determine if there are any hardships in you serving  
9 during any --

10 MR. LI: Or --

11 MS. DO: Correct. Or.

12 MS. POLK: And I agree with that, Your Honor.

13 THE COURT: Reading it now, I -- and I'll just  
14 say I have just taken this -- my judicial  
15 assistant, of course, took this from another case.  
16 It was not here. But I'm looking at it. It seems  
17 somewhat tailored as it is. Determine if there is  
18 anything about this case.

19 That's what you're saying, Ms. Polk, is  
20 really too broad. You'd put it in that fashion  
21 because there will be additional questions asked?

22 MS. POLK: Yes.

23 THE COURT: Certainly we're talking about the  
24 general nature of the case. That's what needs to  
25 be known. What should happen is there should be a  
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1 summary of the areas. It has to do with media  
2 exposure, hardship. It does have to do with the  
3 general nature of the case.

4 I'm writing some things down here. So  
5 the areas it's really covered are -- media could be  
6 put in the order of the questions. But just  
7 listing them now, media exposure, hardship, the  
8 general nature of the case and the nature of jury  
9 duty. Those are the areas.

10 I don't want to expand this. And I'm not  
11 going to let logistics drive what we need to do to  
12 have a proper questionnaire. We've already  
13 anticipated cost of postage and those things.

14 But is that more along the lines? Either  
15 party? Just whoever --

16 MS. POLK: Yes, Your Honor.

17 MR. LI: I'm sorry. I interrupted.

18 THE COURT: Ms. Polk, go ahead.

19 MS. POLK: I agree with you, Judge. I'm fine  
20 with that addition.

21 MR. LI: This is Luis Li. I'm fine with that.

22 But I assume we're having the language about  
23 100 percent fair and impartial?

24 THE COURT: Yes.

25 Okay.

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1 MS. POLK: My next issue is on that same page.  
2 Skip that next paragraph and move to the -- it's  
3 the third full paragraph, beginning with,  
4 "personal, private information you provide will be  
5 treated as confidential" --

6 THE COURT: Ms. Polk, let me interrupt you.  
7 Before you go any further, I've already changed the  
8 language. Again, this was a cut and paste. And  
9 there is really unfortunate -- the underlying part  
10 of that -- well, that's going to be changed.

11 But go ahead, Ms. Polk.

12 MS. POLK: That second sentence, "all  
13 information will be shared at this stage only with  
14 the parties involved in this case."

15 THE COURT: Good point.

16 MS. POLK: I don't know what "at this stage"  
17 means, and I'm sure jurors will be concerned.

18 THE COURT: Good point. Later it talks about  
19 how -- let's see. It's going to be part of the  
20 record in the case. It's, basically, there. At  
21 this state it will be treated as confidential. And  
22 that's the question that comes up.

23 What is the level of juror  
24 confidentiality, especially once the trial over?  
25 Their names are protected. Their addresses are

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1 protected. That's clear. Jury information is  
2 normally collected after voir dire. It has to be  
3 turned in and given to the clerk. But I think that  
4 it allows for the possibility that there can be  
5 release of certain information.

6 Ms. Polk, isn't that why it's worded in  
7 that fashion?

8 MS. POLK: That was my concern, Judge. I'm  
9 not sure that the information is confidential  
10 beyond addresses and numbers and things. I just  
11 didn't want to mislead the jurors into thinking  
12 they are putting some things in writing on here  
13 that is confidential.

14 My thought was take out the second  
15 sentence, "personal, private information is  
16 confidential." And then you go on to say, "the  
17 questionnaires will become part of the official  
18 record."

19 I think, generally speaking, this  
20 information is not confidential.

21 THE COURT: It may not be.

22 Mr. Li or Ms. Do, these are real issues  
23 that come up at some point, I can tell you. What  
24 are your thoughts on that?

25 MR. LI: I think we're at a bit of a -- I

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1 think it's Ms. Do. I'm at a disadvantage in terms  
2 of what the disclosure rules are in Arizona. I'll  
3 be honest with you. I think perhaps the best  
4 course is to let the experts, yourselves and  
5 Ms. Polk, figure out how best to deal with that  
6 particular issue.

7 THE COURT: I agree with Ms. Polk. I get  
8 concerned about misleading the jurors into thinking  
9 something would happen -- you know -- that  
10 something would be released. But here's the  
11 problem: Sometimes, of course, people have to  
12 reveal very personal information in order to make  
13 an appropriate decision.

14 MS. DO: Your Honor, does Arizona require  
15 notice be given to jurors before any information is  
16 released? I agree with Mr. Li. We're at a  
17 disadvantage. We're not familiar with the Arizona  
18 disclosure rules. Here in California there is a  
19 notice requirement. And if there is, perhaps we  
20 can put that in. That could give potential jurors  
21 peace of mind.

22 THE COURT: You know, I don't know that the  
23 law is especially clear on that.

24 Ms. Polk.

25 MS. POLK: I don't believe there is any such  
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1 requirement in Arizona law.

2 THE COURT: I don't think so. I can tell you  
3 it's something I've thought about and contemplated.  
4 But -- and that's just because how can there be any  
5 balancing of privacy if there isn't some notice to  
6 somebody to assert that. It's just kind of a  
7 common sense thing, taking a due-process concept  
8 into this jury and information-release question.

9 That -- I'd like to cover it whichever --  
10 I think that there is a possibility that  
11 information can be released. And you never know  
12 until you're actually there litigating that  
13 particular issue. I think that's a status.

14 Names and address are clearly protected.  
15 And then even that has a qualifier: Unless it's  
16 stated in open court. And that's the other thing  
17 of voir dire process. I do not address jurors by  
18 number during the voir dire process. We make the  
19 record with names. So there is a name that's  
20 coming out at that time.

21 So I don't think the law is clear. I  
22 think you're back to First Amendment principles.

23 MR. LI: Your Honor, as I read the  
24 questionnaire -- and I'm perfectly willing to defer  
25 to Ms. Polk on how she would like it drafted on

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1 this. But as I read it, it is accurate. All  
2 information will be shared at this stage only with  
3 the parties involved in this case. And then it  
4 goes on to say, "Your original questionnaires will  
5 become part of the official court record." That  
6 sounds accurate, from what I'm hearing. But,  
7 again, I would defer to you all.

8 MS. POLK: My request would be to take that  
9 sentence out. My concern is that none of us intend  
10 to share any of this information. But absent the  
11 Court finding just cause under the Supreme Court  
12 rules and sealing information, even at this stage  
13 it's not necessarily confidential.

14 THE COURT: So you're saying that -- what all  
15 would you suggest be deleted, Ms. Polk?

16 MS. POLK: Just that second sentence.

17 THE COURT: But then the first sentence, I  
18 think, is the more -- I don't want to say harmful.  
19 But personal, private information you provide will  
20 be treated as confidential. That's the question  
21 that would leave them to think that anything I  
22 write down will never be discussed.

23 And you know during voir dire what I tell  
24 people is if there is something that you don't want  
25 to discuss in front of the whole panel, then we

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1 will meet in a more private setting. And I'm  
2 rather careful not to say it's going to stay  
3 confidential. I think the name will stay  
4 confidential.

5 Although, there are ways, depending on  
6 how hard somebody works, that a person can probably  
7 be identified. That seems to me to be the more  
8 troubling question in this whole area. Personal,  
9 private information you provide will be treated as  
10 confidential. What we know is address and name is  
11 treated to some extent as confidential. So why  
12 would it just be the second --

13 MS. POLK: I was reading that first sentence  
14 to mean the address and the name -- I think maybe I  
15 was being -- I wasn't reading as broadly as you  
16 are. I think you're correct. I think the  
17 potential juror could even read it to mean  
18 everything I say in here.

19 I have two suggestions. One is to delete  
20 both sentences altogether and start with what's  
21 going to happen with the questions. And a second  
22 suggestion is if we are concerned that we're not  
23 going to get full information because somebody  
24 doesn't feel this is going to be private, we could  
25 consider a sentence that says that in the event you

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1 have information that to share that is personal --  
 2 I'm just thinking what you said, Judge,  
 3 about how you would take people in chambers. Even  
 4 then you don't say this is ever going to be part of  
 5 the record. I know. Even though the script  
 6 indicates that you tell them that, that's the case  
 7 from what I've seen from various decisions around  
 8 in the country about ultimately releasing jury  
 9 information.

10 I think the first sentence --

11 MS. DO: Your Honor, before information is  
 12 released, wouldn't the Court have to take some sort  
 13 of action whether by order so perhaps we can write,  
 14 "Personal information you provide will be treated  
 15 as confidential until further order of the Court"?

16 THE COURT: That would be a true statement.

17 Any comments, Ms. Polk, on that? Are you  
 18 thinking?

19 MS. POLK: Well, I was just thinking. I don't  
 20 have the Supreme Court rules in front of me. I  
 21 just start, Judge, with the position that  
 22 everything that's public unless pursuant to some  
 23 rule or statute or a court order it's made  
 24 confidential.

25 I was just trying to mull through a  
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1 scenario where somehow the information would be  
 2 public without waiting for a court order. And then  
 3 the rule that provides that -- for you to seal, to  
 4 make things -- take it out of the public record  
 5 that you have to make findings.

6 Judge, and I apologize. I don't have  
 7 that rule in front of me.

8 THE COURT: 120. I don't either. Well, we  
 9 can say all -- your address and name will be  
 10 treated as confidential, and then take out the --  
 11 although, as Mr. Li points out, has been pointing  
 12 out, the second sentence is correct technically.  
 13 All information will be shared at this stage only  
 14 with the parties involved. The original answers  
 15 will later become part of the official court  
 16 record. That's probably the way it works.

17 I'm going to put "Your name and address  
 18 will be treated as confidential," and I think  
 19 delete the second sentence and just tell them it's  
 20 going to become part of the official court record.

21 So, basically, what I've done is change  
 22 the first sentence to, "Your name and address will  
 23 be treated as confidential." And then it reads,  
 24 "Your original questionnaires will become part of  
 25 the official court record, and all copies will be

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1 returned to the Court and destroyed."

2 Any further comment on that?

3 MS. POLK: Not on that, but I have some  
 4 additional comments.

5 THE COURT: Okay.

6 Mr. Li or Ms. Do, on the confidentiality  
 7 aspect?

8 MS. DO: No, Your Honor.

9 THE COURT: What I'm going to say is it's  
 10 going to say, "Do not write on the back of the  
 11 pages of the questionnaire," on that last  
 12 underlined sentence on the back of the pages.

13 MR. LI: I hadn't caught that.

14 THE COURT: Okay.

15 Ms. Polk, other point about the  
 16 questionnaire?

17 MS. POLK: Yes, Judge. As we looked at page 4  
 18 on the bottom and top of page 5, the areas -- the  
 19 jury duty in general and then anything about the  
 20 nature of this case, perhaps we could talk through  
 21 what we think is the stage after these jury  
 22 questionnaires come back. What do you think,  
 23 Judge, you're doing with them? Will the parties  
 24 have further involvement? And then maybe will that  
 25 will help me with my concern about those two

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1 questions.

2 THE COURT: I want the questionnaires  
 3 distributed to the attorneys. And they will be on  
 4 a confidential basis at that time. And then I want  
 5 to have a time ahead of trial, not the first day of  
 6 voir dire, but some time ahead of trial where I am  
 7 there with the parties and we go through and make  
 8 decisions on who should not be called to actually  
 9 answer the summons.

10 MS. POLK: Okay.

11 THE COURT: And I want that to be a week ahead  
 12 of trial or so.

13 MS. POLK: Okay. My concern -- I understand  
 14 that the purpose of this questionnaire is to weed  
 15 out those who have some problem with the nature of  
 16 jury duty --

17 THE COURT: Yes.

18 MS. POLK: -- and also about the nature of  
 19 this case. These two I'm just worried will get  
 20 something that's insufficient, then, for the  
 21 parties and the Court to actually act upon. To me  
 22 these are the types of questions that lend  
 23 themselves to more extensive voir dire, that you  
 24 would ask follow-up questions, the attorneys would  
 25 ask follow-up questions, and then we'd be having

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1 discussion about whether or not that's for cause or  
2 just going to be preemptory strike.

3 So I'm not necessarily opposed to these  
4 questions of the Court if you want to leave them  
5 in. I just don't see the nature of these two  
6 questions, just one question, explaining your  
7 answer, that we would all necessarily then be able  
8 to agree this person needs to be dismissed for  
9 cause.

10 THE COURT: Okay. Let's look at the specific  
11 questions on that. My thought is this: I fully  
12 anticipate there is going to have to be further  
13 voir dire in these areas; and some of this is in  
14 the more private setting, as I've described it  
15 also. I want to see people when they're actually  
16 being questioned. And I may take that up as part  
17 of the general questioning of the panels and -- you  
18 know -- our timing. It may not work out.

19 I do think there has to be more questions  
20 on that in many cases. But there will be some  
21 people -- I anticipate it's going to be very clear  
22 that they have strong feelings about something and  
23 they're going to say it. And I think we'll be able  
24 to deal with it.

25 There are going to be some where you're  
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1 right, Ms. Polk. We're not going to be able to  
2 tell. And are you suggesting you have some actual  
3 follow-ups that would flesh that out some more?

4 MS. POLK: No. To the contrary. I would  
5 think perhaps that we either delete it or that we  
6 recognize that that particular question isn't  
7 necessarily going to elicit black and white answers  
8 that will enable us to strike for cause.

9 My other suggestion, if the Court and  
10 parties want to leave it in, is we move that to the  
11 end of the questionnaire. And reason is that  
12 people are going to be immediately thinking about  
13 the nature of the case or the media. Those more  
14 specific questions follow. And my reaction to this  
15 one having it first is that people are going to  
16 start writing about media and other things not  
17 realizing we ask that specific question further  
18 down.

19 So if we're going to leave it in, I would  
20 suggest move it to the end.

21 THE COURT: The importance of the question is  
22 this: This is the area where I get more of the  
23 poisoned panel type of answers than many of the  
24 others. That's one of the questions where people  
25 just want to tell you what they think about

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1 something. And you almost have to come off the  
2 bench and say -- you know -- tell them not to. I'm  
3 just trying to find out who those people are. I  
4 don't quite see it that way.

5 But I want to hear from Ms. Do or Mr. Li.

6 MR. LI: Yes. My reaction to this is I agree  
7 there are -- I think these kinds of questions will  
8 typically trigger -- if somebody is going to be  
9 that type of person and has a high percentage  
10 chance of triggering that reaction, and then they  
11 will do it on this piece of paper instead of in the  
12 open court.

13 As for whether it should be at a later  
14 part of the questionnaire, I guess it could be. I  
15 think it sort of follows right after the case  
16 summary. I think where you're really going to  
17 find -- you're going to find two kinds of folks.  
18 On the one hand, you're going to find folks who are  
19 going to be really anti -- you know -- jury duty,  
20 basically.

21 And I recently was sitting on a panel  
22 where I eventually got kicked but where one of the  
23 jurors literally tried to start almost, like, a  
24 revolution. And I think those are obviously folks  
25 we would not want on it.

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1 And then on the other hand, there are  
2 going to be folks who have a real strong reaction  
3 one way or the other to this particular case  
4 because they've either seen it in the media or for  
5 whatever reason. And I think this will probably  
6 trigger some sort of response out of them.

7 THE COURT: And I've seen that type of answer.  
8 It goes both ways in terms of who people might be  
9 mad at. They can be mad at law enforcement. They  
10 can be mad at the court system for not doing what  
11 he believes the court system should be doing, those  
12 kinds of things.

13 This is kind of the pattern that follows  
14 it. I really like this particular order. I'm  
15 going to stick with that.

16 MS. DO: Your Honor, while we're on this  
17 particular section, I have a very minor request.  
18 And apologize for being nit picky. Is it possible  
19 to remove the phrase you have on the third full  
20 sentence, I believe, where you have, "As a result  
21 of the investigation, James Arthur Ray was  
22 indicted"? That question just sort of suggests the  
23 investigation produced sufficient evidence, and it  
24 might persuade -- have an effect on jurors. If you  
25 can just state James Arthur Ray was subsequently

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1 indicted. Very minor.

2 THE COURT: I don't have any problem with  
3 making these alterations. I want this to be a  
4 neutral statement that gives enough information  
5 that people know about a case so they can see if  
6 they've been exposed to it or remember if they have  
7 been. And then also the nature of the case, to say  
8 no, I don't want to be involved in a case that  
9 involved someone who died.

10 All you want to add is as a result of the  
11 investigations James Arthur Ray was subsequently?

12 MS. DO: I'd ask that the Court remove, "As a  
13 result of the investigation," and just state he --  
14 just say James Arthur Ray was subsequently  
15 indicted.

16 THE COURT: Ms. Polk?

17 MS. POLK: Judge, I have no objection to that  
18 suggestion by Ms. Do.

19 THE COURT: I've just scratched out that first  
20 clause. And it reads, "James Arthur Ray was  
21 subsequently indicted on three counts of  
22 manslaughter."

23 MS. DO: Thank you.

24 THE COURT: Sure.

25 MS. DO: And maybe Ms. Polk will know this  
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1 better. But I know in the indictment Ms. Neuman's  
2 name is listed as Lizbeth Neuman. But in other  
3 documents, including the autopsy and the medical  
4 records, her name is Lizbeth Marie Neuman. And I  
5 think we should probably get that correct.

6 MS. POLK: We were just discussing that among  
7 ourselves. If the Court can give us leave at the  
8 end of the day, we'd like to nail down what her  
9 exact name is. There has been some confusion.  
10 We've seen it both ways.

11 THE COURT: I got the bailiff here. We knew  
12 that there were likely to be some alterations.

13 But what's the plan for mailing?

14 THE BAILIFF: This morning.

15 THE COURT: Because I've got a response time.

16 Don't your copies have when I ask them to  
17 return it? No later than January 25 on page 2 just  
18 about in the middle in big letters? Do you have  
19 that on your copies? There was one clause I added.  
20 Maybe that's it. I have -- that paragraph now  
21 reads, "After you have filled out the questionnaire  
22 completely, please return it in the postage-paid  
23 envelope that has been enclosed for your  
24 convenience no later than January 25, 2011.

25 "Unless you are otherwise contacted by  
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1 the court at the phone number or email address you  
2 have provided, you must appear for jury duty on  
3 February 16 or February 17, 2011, at 8:30 a.m., as  
4 instructed on the enclosed summons for jury duty."  
5 That's how it now reads.

6 Diane.

7 MS. TROXELL: Excuse me, Judge. We have to  
8 have those into the gray top by when they come at  
9 8:30 in the morning. So that's 250 questionnaires  
10 stuffed with return envelopes and summonses  
11 addressed to the people we've already issued the  
12 summons.

13 So when they come to pick up the gray tub  
14 to take the mail, it has to be mailed tomorrow. So  
15 it has to be in Prescott. It has to go out with  
16 the 8:30 tub in the morning. So we have to  
17 complete them today. Otherwise they won't get  
18 mailed until Tuesday because of the holiday.

19 THE COURT: And I want you to have time to  
20 look at them. I'm addressing the attorneys now.  
21 You need to have time to look at them. So we can  
22 get together and go over them.

23 I don't know if you heard Diane or not.

24 Ms. Polk, we need the name as soon as  
25 possible because we have to get the copies made.

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1 250 are going to go out.

2 So is that something -- we'll need that  
3 by early afternoon.

4 MS. POLK: We can do that. We're in the  
5 process right now. Any moment now we will get you  
6 the answer.

7 THE COURT: Okay.

8 MS. POLK: And, Judge, if I heard you about  
9 the January 25, I think we need to clarify. We  
10 want them to have a postmarked by the 25th or  
11 received by the Court by the 25th?

12 THE COURT: I'd say please return it no later  
13 than that.

14 MS. POLK: Does it need to be in your hand by  
15 the 25th?

16 THE COURT: I mean they need to mail it. I  
17 think they need to have this. If we get it out  
18 tomorrow, they're not even going to have it a week  
19 for most of them to do it with that. So I want  
20 them to have it in the mail no later than  
21 January 25. Please mail it, I guess. You can say  
22 that.

23 MS. POLK: I think if you -- typically what we  
24 write is, "postmarked by January 25." And people  
25 understand what that means. You can take it to the

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1 post office that day and get it in the mail that  
2 day, you're okay.  
3 THE COURT: Just like taxes used to be. Okay.  
4 All right. We'll do that.

5 Again, Ms. Do and Mr. Li, have any  
6 comment? Either side, please speak up.

7 Let's cover this other point.

8 MS. POLK: Yes, Judge. I do have -- if we go  
9 to the last page, I've got a couple more points.  
10 And that's the area of media exposure.  
11 Question No. 10. My recommendation is that we  
12 strike "what, if anything, have you read" and that  
13 we put "have you read, heard or seen in the media?"

14 And then the follow-up question is, "If  
15 you have been exposed, then would it interfere with  
16 your ability" -- I think that question is fine.

17 My concern is "What, if anything, have  
18 you read." Are we asking people to write down  
19 everything they remember? If that's what the Court  
20 and the parties' intent is, so be it. But to me  
21 that's very, very broad. And to require people to  
22 start trying to write down everything that they  
23 have read -- and what if later they start  
24 remembering well, I did read that.

25 I'm just worried it's an awfully broad  
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1 question and it's a lot to ask for them to write  
2 down everything they've read, heard or seen in the  
3 media.

4 THE COURT: Ms. Do.

5 MS. DO: Well, perhaps we can reach a  
6 compromise on this. I would agree with Ms. Polk's  
7 request to have the question restated as "have you  
8 read anything?" I think the defense is interested  
9 to the extent the juror can identify with any kind  
10 of specificity what they've seen because, I think,  
11 as the Court might recall from our motion to change  
12 venue, there has been some particular media  
13 coverage that has been very concerning to the  
14 defense. And it would be helpful to us to be able  
15 to have that identified.

16 So perhaps we can have an additional  
17 question not requiring but suggesting to the extent  
18 you can recall, can you identify or give some  
19 description. I think that -- you know -- if I  
20 remember correctly, the Court did agree after  
21 reading the motion to change venue that in this  
22 particular case the pretrial publicity has been so  
23 slanted and, frankly, prejudicial for Mr. Ray that  
24 this is an area that is very concerning to Mr. Ray.  
25 And we're concerned about his right to a fair

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1 trial.

2 I don't think that is that invasive to  
3 ask the jury to the extent that they can, identify  
4 with a little bit more specificity what they've  
5 seen.

6 THE COURT: Yes. I have no idea how someone  
7 might answer that. What, if anything, have you  
8 heard, read or seen? Some people might undertake a  
9 research project of some sort looking back through  
10 old newspapers or something, I suppose. What I  
11 guess we're looking for is some kind of middle  
12 ground, at this point anyway.

13 MS. POLK: Judge, I'm not sure -- I take issue  
14 with the statement by Ms. Do that the pretrial  
15 media was planted. I don't know what that means.  
16 But I do --

17 MS. DO: Slanted, Ms. Polk. I didn't say  
18 "planted." Slanted. Sorry.

19 THE COURT: Slanted. And I didn't address  
20 that because I thought I said that I acknowledge  
21 that there were that type of aspects. Of course,  
22 you gave me many pages of block-type information  
23 and articles. I recognize that there was that type  
24 of coverage. Slanted. Not planted, but slanted.

25 MS. POLK: Judge, I am fine with the  
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1 suggestion her -- the language that Ms. Do just  
2 gave you. I think that would address my concerns.

3 THE COURT: So we're going to delete "What, if  
4 anything" and have the question "have you read,  
5 hear or seen in the media."

6 But then there was a follow up, Ms. Do.  
7 And how did you phrase that?

8 MS. DO: I would add perhaps changing 10(a) to  
9 10(b) and then adding an additional 10(a). To the  
10 extent that you are able to describe, would you  
11 please -- that's not very eloquent. 10(a). To the  
12 extent that you are able to describe with any  
13 specificity, what, if anything, have you read,  
14 heard, seen?

15 And that, I think, delineates Ms. Polk's  
16 concern that we are telling the jury that they are  
17 required to specify. It's optional, I suppose.

18 THE COURT: I lost you at the end there.

19 MS. DO: I'm still here.

20 THE COURT: No. I'm just saying the concept.  
21 It's going to read now "have you read, heard or  
22 seen in the media, including television, radio,  
23 newspapers, internet or any other media source,  
24 about this case and/or James Ray?"

25 MR. LI: Could you do this -- could you do  
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1 this? Could you just say if yes, please explain?

2 THE COURT: That's how it reads now.

3 MR. LI: But the difference is that it says  
4 you would say have you instead of presuming that  
5 they have. I think the please explain is soft  
6 enough that it doesn't -- you know --

7 THE COURT: The question right now is not  
8 grammatical if you take out "what, if anything."  
9 So that has to be addressed.

10 MS. DO: So I think that, Your Honor, just  
11 rephrase it to "Have you read, heard or seen  
12 anything?" And then after the question mark add the  
13 check box, yes or no. And then "If yes, please  
14 explain."

15 MS. POLK: I agree with that, Judge.

16 THE COURT: That's what it says. If yes,  
17 please explain. You just want to add the yes/no  
18 box and then yes, please explain? That's what  
19 you're saying?

20 MS. POLK: And then change the first few words  
21 of that question.

22 THE COURT: It would read now, "Have you read,  
23 heard or seen anything in the media about this case  
24 and/or James Ray? If yes, please explain." I  
25 think that's what you're suggesting. Yes, no,

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1 please explain, like we have; right?

2 MS. POLK: Yes.

3 MS. DO: Yes.

4 THE COURT: All right.

5 MS. POLK: Judge, the last thing I have is  
6 that I believe we do want them -- we need a  
7 statement that this is a sworn statement. And what  
8 we've used in other cases -- I don't see it on  
9 yours. Perhaps you've added it, Judge. That I  
10 hereby declare under penalty of perjury that the  
11 foregoing is a true and correct or the foregoing is  
12 true and correct, signed and dated. And that could  
13 go at the front or at the end.

14 THE COURT: And what was your wording again,  
15 Ms. Polk?

16 MS. POLK: I hereby declare under penalty of  
17 perjury --

18 THE COURT: Yes?

19 MS. POLK: -- that the foregoing is true and  
20 correct, and then a signature line and date line.

21 THE COURT: Ms. Li? I mean Mr. Li or Ms. Do?  
22 Sorry.

23 MS. DO: That's fine.

24 THE COURT: I'll put that at the bottom on  
25 page 7 kind of at the end of everything. And I

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1 think they'll understand when they say, see

2 additional page, or something. We do have the

3 additional page for them. I think it's the way

4 that's worded that -- again, it could get into

5 return mail and that. But some of them may add  
6 their own page, I suppose. Okay.

7 Anything else on the mechanics of the  
8 questionnaire itself?

9 MS. POLK: No, Your Honor.

10 MS. DO: No, Your Honor.

11 THE COURT: Looking through my notes, I do  
12 have rulings I've been preparing. At least two of  
13 them are going to be filed today, one on the audio  
14 recording and the other on what's generally been  
15 termed the "motion in limine on financial records."  
16 I'll mention that.

17 Anything else right now?

18 MS. POLK: I'm sorry, Ms. Do. Go ahead.

19 MS. DO: Thank you.

20 Yeah. Just a couple housekeeping  
21 matters. I know at the last status, which I wasn't  
22 able to attend, there was a discussion that the  
23 Court was going to make additional efforts to see  
24 if we were going to be in Prescott. I was  
25 wondering if we had any update on that.

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1 THE COURT: I did say we would talk about the  
2 place of trial. I talked to Judge Mackey about  
3 that, and he said there is not. And that's when I  
4 mentioned that we'd be using the big courtroom  
5 downstairs for jury selection. That is the latest  
6 word. I did talk to Judge Mackey about it. He  
7 talked to court admin. And he does not see that  
8 there is going to be a courtroom available. That's  
9 the last word I have.

10 I think you need to plan with that in  
11 mind. Thank you. I mentioned that at the start.  
12 And that is a very important thing to bring up.

13 MS. DO: Thank you. And my last question is I  
14 know we had an August trial date. The Court had  
15 set a deadline for the parties to exchange witness  
16 and exhibits lists. And I don't believe we've set  
17 a deadline for the February 16 trial.

18 Is this something the Court would like  
19 the parties to work out, or would the Court just  
20 set a date?

21 THE COURT: I want a date set. It's fine with  
22 me if you work it out between the parties. There  
23 is some other dates I want to set as well, as a  
24 matter of fact. Didn't get carried onto the new  
25 minute entry.

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1 One is for providing proposed voir dire  
2 and jury instructions. Jury instructions -- I  
3 would like initial proposed jury instructions by  
4 January 31. Obviously that's just something to  
5 work with. And that changes obviously most cases.

6 The other thing with regard to proposed  
7 voir dire, I think the defense has indicated  
8 largely what voir dire they would like. In this  
9 case I would really like the questions that you  
10 really want the Court to ask not -- you know --  
11 some of these you will be doing follow up on. You  
12 will have specific. But more general types of  
13 questions, what you want the Court to be asking  
14 specifically.

15 I've not had issues come up in voir dire.  
16 I've had lawyers pretty much ask appropriate  
17 questions. Very few objections over the years.

18 But I'd like both the proposed voir dire  
19 and jury instructions by January 31.

20 With regard to exchanging final list of  
21 exhibits and witnesses, what would you propose on  
22 that?

23 MS. DO: We would be fine with that same date,  
24 January 31, if Ms. Polk is.

25 THE COURT: Ms. Polk.

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1 MS. POLK: Judge, yes. We'd be fine with that  
2 as well.

3 THE COURT: I will say this: Obviously that's  
4 not some kind of a disclosure date in particular,  
5 in particular. You have to make disclosure under  
6 the rules and timely supplement and do those  
7 things. That's there to really prevent to the  
8 extent I can really last-minute disclosures that  
9 create the problems in a trial. I look at that as  
10 the time as just -- you know -- everything has to  
11 be there by that point. If there is anything out  
12 there that needs to be disclosed, it absolutely has  
13 to be in it by that time.

14 And that doesn't necessarily obviate at  
15 all a disclosure problem if it exists to something  
16 that hasn't been disclosed earlier that should have  
17 been. But that's the way I see that particular  
18 deadline. It's to really catch anything so nothing  
19 slips through and we have to deal with those  
20 surprise kind of things that should not come up in  
21 a trial.

22 Thank you for bringing that up. I even  
23 had it in my notes. The voir dire and the jury  
24 instruction deadline have been left off. Diane  
25 pointed that out to me.

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1 But anything else that we need a date on?  
2 I know we're going to need to set time to talk  
3 about the jury questionnaires. And that's going to  
4 be after the time for hearing that I have set.  
5 There just -- likely not to be all -- they're not  
6 going to be back by that time, I would think, the  
7 majority. So we'll just have to stay in contact  
8 and set a date acceptable for everyone on that.

9 MS. POLK: Judge, I have a couple more things.

10 THE COURT: Sure.

11 MS. POLK: Could I ask you to clarify what you  
12 just said about disclosure. I think I you heard to  
13 say that the rules of criminal procedure still  
14 apply to the disclosure deadlines.

15 THE COURT: They do.

16 MS. POLK: Okay. For a moment there I thought  
17 you were staying that the January 31 was the  
18 disclosure deadline.

19 THE COURT: No. I was saying just the  
20 opposite. I don't want someone to see that as some  
21 new disclosure deadline I'm setting. I'm looking  
22 at that as it's really necessary that both sides  
23 look at your cases and make sure everything is out  
24 and disclosed by that. It's to really make sure  
25 that there is nothing slipping through so we're --

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1 you know -- a week, two weeks, into trial,  
2 whenever, and now oh. Here's something that was  
3 not disclosed. It needs to be disclosed.

4 I understand there can be instances  
5 during trial and that comes up. But I really want  
6 full disclosure by that time. And it's a time to  
7 really look closely and make sure that the rules  
8 have been complied with. And if there is something  
9 that's late, at least it can be addressed -- you  
10 know -- prior to the actual start of trial.

11 MS. POLK: Thank you, Judge, for that  
12 clarification.

13 The couple other issues I have, the  
14 parties have agreed that we will agree on a time  
15 line for when we believe that opening statements  
16 would begin and that we would be calling witnesses.  
17 And one of reason for our agreement is that we have  
18 a lot of witnesses who are out of state. And we're  
19 trying to predict the best that we can when they  
20 would actually be on the stand to minimize the  
21 inconvenience to those witnesses, time away from  
22 jobs and home and also to minimize the expenses to  
23 how the witnesses -- and we talked about agreeing  
24 on a time line both for the state's case and then  
25 for the defense case for the same reasons.

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1 And I guess my first question is once the  
2 parties have agreed on that time line, we intend to  
3 submit it to the Court by way of proposed  
4 stipulation.

5 Will the Court be okay with what we're  
6 proposing to do?

7 THE COURT: Yes.

8 MS. POLK: And along those lines, the 16th and  
9 the 17th of February would be two different dates  
10 for two groups of potential jurors to come in. The  
11 18th we would begin the process of voir dire of the  
12 panel of 30.

13 I'm just wondering if we can get an  
14 agreement as to how long that process will take.  
15 Do we think we will have a jury seated within one  
16 day and an agreement as to when opening statements  
17 would begin?

18 THE COURT: Ms. Do or Mr. Li.

19 MS. DO: I think one day is probably really  
20 far too optimistic. I don't know how fast the  
21 Court goes on jury selection. But I think it might  
22 be a safer bet to -- and this is something perhaps  
23 we can work out between the parties and then submit  
24 to the Court.

25 But I would think that perhaps opening  
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1 statements we can put over to the following Monday  
2 on the 24th. And that would give us the 19th, the  
3 20th and 21st.

4 Am I looking at the right calendar? I'm  
5 sorry. I'm sorry. The -- no. I'm sorry. I was  
6 looking into January still. The 16th and 17th,  
7 general voir dire then the -- general voir dire  
8 begins the 18th. I would set aside a couple of  
9 days, Your Honor, for that.

10 THE COURT: I think this process is probably  
11 going to take more than one day -- the actual  
12 questioning of the panel, the focused panel. I  
13 would -- let me look at my calendar. Maybe look at  
14 February. And that's -- that next week is a short  
15 week too, isn't it?

16 MS. POLK: Yes, Judge.

17 THE COURT: Ms. Do, go ahead.

18 MS. DO: I was going to suggest that maybe  
19 we'd agree to start opening statements on the 28th,  
20 the following Monday. And that would give us a  
21 little bit of a cushion. I think we'll probably be  
22 in jury selection for at least a couple days. If  
23 we finish short of a week, at least it's better to  
24 have a cushion than to go over.

25 THE COURT: That sounds reasonable.

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1 Ms. Polk, just plan on it would actually  
2 be -- now I've got my trial calendar here. It  
3 would actually be March 1, because Mondays are  
4 going to be the one day typically I will not be --  
5 we will not be in trial. I'll be doing the regular  
6 calendar. That would be March 1.

7 Ms. Polk.

8 MS. POLK: Judge, I think that would give us a  
9 good, safe cushion in bringing in witnesses for  
10 that first week.

11 THE COURT: Okay. Then let's -- essentially,  
12 what we have, then, is -- we'll just say that.  
13 Voir dire will be completed by then. Everyone is  
14 confident of that. Plan on starting the actual  
15 trial with opening -- reading of the preliminary  
16 instructions and opening on March 1.

17 Okay.

18 MS. POLK: Judge, the last thing I have is  
19 that we have three days set aside for oral argument  
20 or evidentiary matters -- January 26, 27 and 28.

21 THE COURT: Right.

22 MS. POLK: And from the state's perspective,  
23 we have -- there are some matters pending. And I  
24 was just trying to contemplate what we actually  
25 need to be in court for versus perhaps freeing up

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1 some of those days.

2 THE COURT: I think we just set that months  
3 ago to make sure we had the time. I see the  
4 motions that have come in. It doesn't appear we  
5 would need three days to handle those.

6 MS. DO: Except we do have this extended  
7 deadline for experts given that the parties are  
8 each providing disclosure on that a little bit  
9 later than we had hoped.

10 And so if there are motions filed on the  
11 experts by January 24th, we would anticipate  
12 needing those days to conduct evidentiary hearings,  
13 whether they are Daubert or other evidentiary  
14 hearings.

15 So we would request, if the Court's  
16 agreeable, to continue to reserve those three days.  
17 At this point we don't know for certain that we  
18 would anticipate having a need for those days.

19 MS. POLK: And, Judge, I'm fine with that. I  
20 just wanted to bring up that we have those three  
21 days reserved and have that discussion about  
22 whether or not we still think we need them.

23 THE COURT: Since somebody mentioned Daubert,  
24 is that anticipated?

25 MR. LI: I think the answer --

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1 Go ahead, Truc.

2 MS. DO: I think it's anticipated in a sense  
3 that it's definitely a concern of ours. The  
4 difficulty is the parties have just exchanged  
5 disclosure, and we haven't -- Ms. Polk's office is  
6 in the process of scheduling interviews for us.  
7 And so it's difficult for the defense to say  
8 whether it's certain or not. We're conducting our  
9 due diligence in determining whether or not there  
10 are grounds.

11 MR. LI: But I think it's fair to say that at  
12 least with some of the experts it's more likely  
13 than not.

14 THE COURT: Okay. I really don't want to get  
15 into this now. We've gone past and told Mr. Hughes  
16 maybe 15 minutes would be enough time to cover the  
17 questionnaire issue. Don't want to get into this.

18 But I think there is some question as to  
19 what the standard is in Arizona. There is a legal  
20 question to start off, isn't there?

21 MS. POLK: Judge, in fact, a new decision just  
22 came out of Division 2 today. And I can forward it  
23 to the parties. But it appears to say that the new  
24 statute is unconstitutional requiring the Daubert  
25 hearing. I haven't had a chance to read it. But I

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1 will forward it to the parties. And if the Court  
2 would like, I can forward it to Diane as well.

3 THE COURT: I just haven't had a chance to  
4 look at email yet. I'm on a service that sends  
5 those out as soon as they come out. So I will see  
6 it. But that would take it back to Friday,  
7 essentially.

8 MS. POLK: Yes.

9 MS. DO: That would be really helpful if  
10 Ms. Polk could send it to us. Thank you.

11 THE COURT: Ms. Polk, please do that. And  
12 people can look at that.

13 I want to keep those hearings there. But  
14 what I'd like to do is have as many management  
15 conferences as we need telephonically so we can  
16 plan and use the time as best we can.

17 I've set those days aside. I'm going to  
18 leave them there for this case. And if you've got  
19 other things you need to do on the case --  
20 interviews, say -- we can cover what we need to in  
21 that court time. Then I'll address that.

22 MR. LI: Your Honor.

23 THE COURT: Yes, Mr. Li.

24 MR. LI: Let me raise one small point. Just  
25 as a trial logistics thing. Since we are going to

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1 do our best to set out some sort of schedule to  
2 accommodate each other's concerns and also the  
3 financial issues relating to witnesses and what  
4 have you, we'd ask that the parties share with each  
5 other -- you know -- the order of witnesses that  
6 they intend to call for the next week. I think it  
7 will just make everybody's life easier. And it  
8 would be appreciated. That information is going to  
9 be available anyway.

10 MS. POLK: Judge, that is always my practice.

11 THE COURT: That's an excellent procedure in  
12 this case. I was going to mention -- one thing the  
13 defense had on the proposed questionnaire was that  
14 extensive list of witnesses. And that's something  
15 I think that should actually be distributed to  
16 prospective panel members on the day we actually  
17 start with the final group just so people can  
18 actually look at that. I wanted to mention that  
19 too.

20 Okay. I have one other thing I want to  
21 bring up. And I want to make sure you tell me what  
22 you think needs to be discussed. Anything else?

23 MS. DO: Your Honor, I had one question. I  
24 understand the Court is issuing some rulings today.  
25 I think Ms. Polk would agree the biggest motion

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1 that will affect the case trial preparation --

2 THE COURT: 404(b)?

3 MS. DO: Yes.

4 THE COURT: That was the point I was going to  
5 bring up. Go ahead. That's what I wanted to  
6 discuss too is the 404(b) because I wanted to see  
7 how that played into this witness planning, if  
8 that's a factor in the initial witness planning.  
9 Let's say that.

10 Go ahead, Ms. Do.

11 MS. DO: I would say yes for the defense. My  
12 understanding is the 404(b) motion is denied. The  
13 state will have approximately, I think, about 20  
14 more additional witnesses that they will call,  
15 which will then require the defense to identify  
16 rebuttal witnesses to the prior sweat lodge  
17 incident. And so we're talking about probably a  
18 total -- an additional 30 witnesses that are in or  
19 out depending on the Court's ruling.

20 And as Ms. Polk has indicated, the  
21 majority of -- the great majority of these  
22 witnesses are not in Arizona. And so arrangements  
23 would be needed to fly them in.

24 THE COURT: Ms. Polk, did you have anything  
25 you want to say about that?

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1 MS. POLK: Yes, Judge. I agree in part with  
2 Ms. Do, but I disagree as well. The number of  
3 witnesses that the state would use to present a  
4 404(b) is not 20 or 30 or any predetermined number  
5 at this time. If the information comes in, then  
6 the state makes the decision how best to present  
7 that information. And it would be premature that  
8 we are talking about 20 or 30 additional witnesses.

9 Just as in the sweat lodge itself, on the  
10 day of the deaths there were approximately 56  
11 people. We will not call all 56. We have done  
12 full disclosure of everybody we're aware of that  
13 has information about the 2009 events as well as  
14 the prior events. But with respect to the 2009  
15 event, for example, we will not be calling all 56.  
16 We have to sift through and determine how best to  
17 present the case.

18 So I just wanted the Court to know that  
19 if the 404(b) information comes in, there is no  
20 automatic number of witnesses that would then come  
21 in. That's not how the equation works.

22 But I do agree with Ms. Do that in  
23 planning the trial, obviously if the parties  
24 understand the parameters, that it's helpful to all  
25 of us. I don't want -- I'm trying to figure out

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1 how to say this diplomatically. I want a good  
2 decision. The state feels very strongly that the  
3 404(b) information is relevant. And I don't want  
4 somehow to get a decision that keeps it out because  
5 the parties are asking for a ruling now.

6 THE COURT: I wouldn't do that. I'm going to  
7 take the time necessary. I've been given a lot of  
8 material. And I think there have been observations  
9 to this effect before. And that is there isn't law  
10 that I see that deals directly with the issues in  
11 the 404(b) area and in the other areas I've just  
12 dealt with as well. There just isn't law that I've  
13 seen that directly addresses these. And I mean  
14 appellate law out of any jurisdiction that really  
15 has dealt with these issues, at least what I've  
16 been presented with or what I've seen.

17 I know both sides have presented me with  
18 the general concepts. And some specific cases  
19 sometimes in the manner of distinguishing away a  
20 case or something but then not having a positive  
21 case saying this is how it should be viewed.

22 So, Ms. Polk, I'm going to -- as I said,  
23 a lot of information.

24 Mr. Li and Ms. Do, a lot of information  
25 I've been presented with. And it's a lot to go

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1 through without a lot of specific legal guidance,  
2 that I can see. But --

3 MS. POLK: Judge, that was my point. We've  
4 given you a lot of information. And I understand  
5 that it takes time to go through it. The state  
6 will -- I don't want you to feel pressure. I want  
7 you to take the time that you need, and we'll just  
8 deal with it, I guess, is the point I was trying to  
9 make.

10 THE COURT: I appreciate that.

11 Mr. Li, anything else on -- I'm sorry.

12 Ms. Do, you brought that up. It was the  
13 point that I wanted to raise. You started saying  
14 that. That's what I wanted to talk about before we  
15 adjourn because I know that there was some aspect  
16 of trial planning.

17 MS. DO: Thank you. I think Mr. Li and I  
18 wholeheartedly agree with Ms. Polk. But we would  
19 like a thorough ruling, not one that is being  
20 expedited just for the sake of time.

21 I just wanted to raise it for the Court  
22 so the Court is aware that it does impact at least  
23 for the defense -- I won't say for Ms. Polk -- our  
24 trial preparation. I can just state that the state  
25 has noticed a total of 19, specifically, witnesses

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1 to cover the 2004 to the 2008 sweat lodges.

2 And, I think, from the evidentiary  
3 hearings the Court could gather there were many,  
4 many participants throughout these years. And so  
5 the defense needs to be able to go through and  
6 identify the appropriate witnesses for rebuttal.  
7 And so we would just ask for that to be considered  
8 as a factor as we move forth and prepare for trial.

9 THE COURT: All right.

10 Ms. Polk, anything else?

11 MS. POLK: No, Your Honor. Thank you.

12 THE COURT: And Ms. Do, Mr. Li?

13 MR. LI: Nothing further.

14 MS. DO: No, Your Honor. Thank you.

15 THE COURT: I do have to revise the  
16 questionnaires now. As I indicated, I want to get  
17 those rulings out that are in a draft form right  
18 now. So thank you.

19 We're adjourned.

20 MR. LI: Thank you, Your Honor.

21 MS. POLK: Thank you, Judge.

22 THE COURT: Good bye.

23 (The proceedings concluded.)

24

25

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2 COUNTY OF YAVAPAI    ) ss: REPORTER'S CERTIFICATE  
3

4 I, Mina G Hunt, do hereby certify that I  
5 am a Certified Reporter within the State of Arizona  
6 and Certified Shorthand Reporter in California

7 I further certify that these proceedings  
8 were taken in shorthand by me at the time and place  
9 herein set forth, and were thereafter reduced to  
10 typewritten form, and that the foregoing  
11 constitutes a true and correct transcript.

12 I further certify that I am not related  
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14 parties or attorneys herein, nor otherwise  
15 interested in the result of the within action

16 In witness whereof, I have affixed my  
17 signature this 23rd day of February, 2012  
18  
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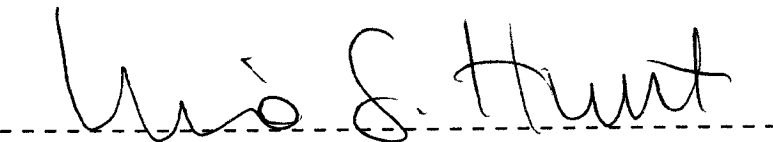
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6 am a Certified Reporter within the State of Arizona  
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